

Mr. William Kennard
Chairman Designate
Federal Communications Commission
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Washington, DC 20554

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FEB 17 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ex Parte Letter Re: Cases WT 97-192, MM Docket 97-182, and DA 96-2140

Dear Chairman Kennard:

Please terminate all action in the preceding cases. They attempt to make the FCC the "Federal Zoning Commission" for cellular and broadcast towers and violate the intent of Congress, the Constitution and principles of Federalism.

Congress and the courts have long recognized that zoning is a matter of peculiarly local concern. The FCC has no zoning knowledge or expertise and is not accessible to most citizens.

For these reasons and other, Congress expressly preserved local zoning authority over cellular towers in the 1996 Act. Now the FCC is trying to get this jurisdiction back by issuing rules which improperly infringe on local zoning authority.

The FCC's efforts to assume jurisdiction over any local zoning matter where RF radiation is mentioned is unacceptable. The FCC ignores the fact that we cannot necessarily control the statements citizens make during meetings of our legislative bodies. Many municipalities, by state or local law, are required to allow citizens to speak on any topic they wish, even on items that are not on the agenda. This is part of what local government is all about.

Some of our citizens may be concerned about radiation from cellular towers. For the reasons just described we cannot necessarily prevent them from mentioning their concerns to us. The FCC's attempt to use this as a means to seize zoning authority and reverse local decisions violates basic principles of Federalism, Freedom of Speech and the rights of our citizens to petition their government.

This is particularly true if a municipality expressly says it is not considering such statements that go beyond the radiation authority Congress left with municipalities) and the decision is completely valid on other grounds, such as the impact of the tower on property values or aesthetics.

For similar reasons the FCC cannot "second guess" the reasons for a municipality's decision. The FCC, like the courts, is bound by the stated reasons given by a municipality. Either these reasons are sufficient to uphold the decision or they are not. The FCC cannot "second guess" a municipality's true reasons anymore than the courts can "second guess" the true reasons for the FCC's decisions.

The FCC's proposal to ban moratoria on cellular towers is objectionable for many of the reasons set forth above. It also fails to recognize that for some municipalities moratoria are a well recognized zoning tool, particularly while they revise zoning ordinances. More importantly, Congress took away the FCC's authority over cellular tower zoning, and this includes moratoria.

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Dear Senator_____:

Dear Representative_____:

We are writing you about the Federal Communications Commission and its attempts to preempt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Both Congress and the courts have long recognized that zoning is a peculiarly local function. Please immediately contact the FCC and tell it to stop these efforts which violate the intent of Congress, the Constitution and principles of Federalism.

In the 1996 Telecommunications Act, Congress expressly reaffirmed local zoning authority over cellular towers. It told the FCC to stop all rulemakings where the FCC was attempting to become a Federal Zoning Commission for such towers. Despite this instruction from Congress, the FCC is now attempting to preempt local zoning authority in three different rulemakings.

Cellular Towers - Radiation: Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC. The FCC is attempting to have the "exception swallow the rule" by using the limited authority Congress gave it over cellular tower radiation to review and reverse any cellular zoning decision in the U.S. which it finds is "tainted" by radiation concerns, even if the decision is otherwise perfectly permissible. In fact, the FCC is saying that it can "second guess" what the true reasons for a municipality's decision are, need not be bound by the stated reasons given by a municipality and doesn't even need to wait until a local planning decision is final before the FCC acts.

Some of our citizens are concerned about the radiation from cellular towers. We cannot prevent them from mentioning their concerns in a public hearing. In its rulemaking the FCC is saying that if any citizen raises this issue that this is sufficient basis for a cellular zoning decision to immediately be taken over by the FCC and potentially reversed, even if the municipality expressly says it is not considering such statements and the decision is completely valid on other grounds, such as the impact of the tower on property values or aesthetics.

Cellular Towers - Moratoria: Relatedly the FCC is proposing a rule banning the moratoria that some municipalities impose on cellular towers while they revise their zoning ordinances to accommodate the increase in the numbers of these towers. Again, this violates the Constitution and the directive from Congress preventing the FCC from becoming a Federal Zoning Commission.

Yours Truly,

Similarly, please terminate the FCC's proposed rulemaking preempting local zoning of broadcast towers. As you well know, broadcast towers can be over 2,000 feet high—they are some of the tallest structures known to man. It is therefore astounding that you would propose that municipalities can't consider the impact of such towers on property values, the environment or aesthetics and that even safety considerations take second place. Safety always has to be the first priority.

And setting artificial time limits for municipalities to act on environmental zoning and building permit approvals for such towers serves no useful purpose. It is a violation of the U.S. Constitution, the Communications Act and Federalism for you to put time limits on municipalities to act on all local approvals and then state that all such applications will be automatically deemed granted if we don't act within this timeframe, even if the application is incomplete or violates state or local law.

The FCC should consider how it would react if it was told that any broadcast license application would be automatically deemed granted unless the FCC acted on it within 21 to 45 days; that this rule applied whether or not the application was complete; whether or not the applicant was foreign or domestically owned or otherwise qualified; or even whether the frequencies were available. And the rule would apply without regard to whether the tower for the station was at the end of an airport runway, in a wetland or in a historic district.

For these reasons the proposed actions all violate the Communications Act and the Constitution. Please terminate all these proceedings without taking the actions proposed therein.

Very truly yours,

Mrs. Lisle J. Risland

HIGHLAND LAKES CONDOMINIUM ASSOCIATION

1997-98 Snow Removal Policy

INTRODUCTION:

Snow removal on such a large scale, involving many people, and doing it successfully in a small time frame is a challenge for everyone involved. We need to work as a team to establish efficient procedures. We are striving to improve the program, and we hope everyone will cooperate with us to make this snow season the safest one yet. It takes twelve workers, eight to ten hours, to remove an average snowfall from Highland Lakes. The following is an outline stating specific responsibilities of the Highland Lakes Maintenance Dept., Office Staff and Residents as it was approved by the Board of Directors. There are 44 courts with many connecting sidewalks. **Please have patience and follow the rules to ensure that everyone has a safe winter.**

MAINTENANCE DEPARTMENT:

Snow Removal from Sidewalks:

- Snow removal from sidewalks, by the Association's Maintenance Department, will be performed during daylight hours, when the snow accumulation reaches 1 1/2" or more. Ice removal from sidewalks will be performed when weather conditions cause ice to cover the sidewalk surface.
- There are three steps involved in cleaning the sidewalks. They are as follows:
 - 1) Snow blowing will be done by a tractor, then by a worker with a push blower.
 - 2) Shoveling snow from the front step and stoop will be done next.
 - 3) Peladow* will be applied if needed. Since it takes a full day for snow removal, Peladow is usually applied the second day after a snow storm.
 - 4) **If your area has a snow/ice buildup that requires removal before the Maintenance Department can respond, Peladow is provided for your use at the Clubhouse. Please bring your own container to transport it to your unit.**

Snow Removal from Main Roads and Courts:

- The main roads are plowed first, then the Clubhouse parking lot. The centers of the courts are plowed before any entire court.
- There are three trucks and drivers responsible for approximately 15 courts each. They are responsible for the same courts the entire season. It takes approximately 30 to 45 minutes to complete each court.
- The drivers alternate the order in which they plow each time it snows, to insure fairness to each court. For example, if you live on Savoy and your court is plowed at 9 A.M., the next time it snows, it won't be plowed until 4 P.M. Each man is equipped with a radio for communication with the office.